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SUPREME COURT, U. S.

No. 31, ORIGINAL

IN THE

Supreme Court of the United States

OCTOBER TERM, 1967

STATE OF UTAH, *Plaintiff*

v.

UNITED STATES OF AMERICA, *Defendant.*

SUPPLEMENTAL MOTION OF GREAT SALT LAKE MINERALS & CHEMICALS CORPORATION TO INTERVENE, IN THE ALTERNATIVE, AS A DEFENDANT, AND ITS ANSWER AND CROSS CLAIM

GEORGE E. Boss
Senior & Senior
10 Exchange Place
Salt Lake City, Utah 84111

ROBERT D. LARSEN
Royall, Koegel, Rogers
& Wells
1730 K Street, N.W.
Washington, D.C. 20006

Attorneys for GREAT SALT LAKE MINERALS & CHEMICALS CORPORATION

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SUPPLEMENTAL MOTION OF GREAT SALT LAKE MINERALS & CHEMICALS CORPORATION TO INTERVENE, IN THE ALTERNATIVE, AS A DEFENDANT, AND ITS ANSWER AND CROSS CLAIM

As a supplement to its Motion to Intervene as a Plaintiff, previously filed herein, GREAT SALT LAKE MINERALS & CHEMICALS CORPORATION (hereinafter called "GSL"), a Delaware corporation, by its attorneys, moves the Court, as an alternative to its said Motion to Intervene as a Plaintiff, for an order granting it leave to intervene as a Defendant in order to assert its defenses and claims set forth in its proposed answer and cross claim, *infra*, p. 11.

STATEMENT OF FACTS

The need for and purpose of the instant action is explained in some detail in GSL's Statement of Facts contained in its Motion to Intervene as Plaintiff, previously filed herein. Those facts will not be restated in this motion. Suffice it to say the dispute between the United States (hereinafter called "U.S.") and the State of Utah (hereinafter called "State") necessitated action by the Congress and the State Legislature to resolve once and for all the status of the title of the respective sovereigns to certain lands, which are the subject of the instant controversy, surrounding the Great Salt Lake (hereinafter called "Lake"). Also, it has become apparent that private parties in addition to the two named sovereigns are claiming interests in the subject lands which could be adversely affected by the outcome of this litigation.

The Congress took the initiative in settling the dispute by enacting P.L. 89-441.[1] In essence, the Congress attempted to do three things. First, it attempted to protect the rights which any private parties might conceivably have in the lands in controversy by expressly providing that nothing in the Act was to be construed to affect those rights.[2] Second, the Act established a plan whereby the State could initially decide to either purchase the U. S. interest or bring a suit in this Court to determine the paramount title

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[1] 80 Stat. 192 (1966).

[2] Section 2 of P. L. 89-441 provides:

That the provisions of this Act shall not affect (1) any valid existing rights or interests, if any, of any person, partnership, association, corporation, or other nongovernmental entity, in or to any of the lands within and below [the surveyed meander line of the lake] . . . .

as between the two sovereigns. Should the decision go against the State, it would then once more have an opportunity to purchase the U. S. interest.[3] Third, in order that the development of the Lake's resources could proceed unhindered pending final resolution of the dispute, the State was to be empowered, as a trustee during the interim, to administer the land and issue leases which would be binding on the sovereign ultimately assuming ownership of the lands in controversy.[4]

It was further provided in P.L. 89-441 that its terms and conditions would become effective only upon an express act by the State Legislature assenting thereto. The State enacted such legislation in which it agreed to act as trustee and authorized the instant action to be brought. In the same act the State Legislature "ratified and confirmed as of their date of issuance" existing leases of the State embracing portions of the land in controversy.[5]

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[3] P. L. 89-441, § 5, 80 Stat. 192 (1966).

[4] Section 6 of P. L. 89-441 provides that if the United States ultimately assumes ownership of the lands in controversy, then

> any valid permits, licenses, and leases issued by the State under authority of this section, shall be deemed permits, licenses, and leases of the United States and shall be administered by the Secretary in accordance with the terms and provisions thereof.

This section was amended by P.L. 89-542, 80 Stat. 549 (1966) to add the following language at the end of the section:

> excepting for land rental rates which rates shall be subject to change based upon fair rental value as determined by the Secretary of the Interior and shall be subject to review and appropriate modification not less frequently than every five years by the Secretary of the Interior in accordance with rules and regulations of the Department of the Interior.

[5] Ch. 11, § 6, Utah Laws 1966 (2d Special Session).

Pursuant to the said legislation the State initiated this action. In its complaint the State claimed ownership of all lands surrounding the Lake and lying below the surveyed meander line. The State's claim is based on the theory that under the "equal footing" doctrine it acceded to the ownership of the entire bed of the Lake as of the date of statehood, January 4, 1896. The State further claims that the Lake bed at statehood included all of the lands lying below the meander line and that it has never been dispossessed of its ownership of these lands, except by express grant.

The U.S. claims a substantial portion of these lands on the basis of two theories. One theory is that by virtue of its ownership of uplands (lands above and contiguous to the meander line) it is entitled to lands lying below the surveyed meander line under the common law doctrine of reliction and accretion.[6] The other theory is that under the so-called Basart doctrine enunciated by the Department of Interior,[7] the U.S. is entitled to lands lying below the meander line and fronting on uplands owned by private fee owners. Apparently, the Basart doctrine is only applicable when at the time of a grant of patent of uplands by the U.S. there existed a substantial amount of exposed land between the meander line and the water's edge.

GSL owns lands in fee which are upland of a portion of those lands which are the subject of this controversy, and it owns options to obtain the interests, if any, in a portion of the lands in controversy claimed by other private

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[6] It is not clear as to whether the U. S. claims any rights to lands lying below the present water's edge.

[7] *Madison* v. *Basart*, 59 I. D. 415 (1947).

parties.[5] GSL's claims to lands lying below the meander line are based on the common law doctrine of reliction and accretion and conflict directly with the claims of both the original parties.

I. GSL IS AN INDISPENSABLE PARTY

As a fee owner of lands upland of the lands in controversy, GSL's legal and factual position is similar to that of Morton International, Inc., which has applied to intervene in this action as a defendant claiming adversely to both the State and U.S. Both Morton International, Inc. and the U.S. in their respective briefs have argued at length the reasons for considering certain upland fee owners, of which GSL is one, indispensable parties to this action. If the arguments of the U.S. and Morton International, Inc. are sustained insofar as the indispensability question is concerned, GSL would be equally indispensable. Nothing further need be added in supplementation to the positions taken by the U.S., the State and Morton International, Inc. on the issue of whether upland fee owners are indispensable to this action. Inasmuch as the question of this Court's jurisdiction has been raised by the State, GSL, as a non-Utah citizen, would not by its own presence in this litigation oust this Court of its original jurisdiction.

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[5] In addition to its fee lands GSL holds leases from the State embracing a portion of the lands in controversy and also has an option to lease additional portions. The option to lease has been exercised.

II. GSL HAS A RIGHT TO INTERVENE

Rule 9 of the newly-adopted Rules of Procedure of this Court provides:

> The form of pleadings and motions in original actions shall be governed, so far as may be, by the Federal Rules of Civil Procedure, and in other respects those rules, where their application is appropriate, may be taken as a guide to procedure in original actions in this court.

Rule 24(a) of the Federal Rules of Civil Procedure provides:

> Upon timely application anyone shall be permitted to intervene in an action . . . when the applicant claims an interest relating to the property or transaction which is the subject of the action and he is so situated that the disposition of the action may as a practical matter impair or impede his ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.

Pursuant to Rule 24(a), GSL, we submit, has the right to intervene in this proceeding.

A. GSL HAS A SUBSTANTIAL INTEREST IN THE CONTROVERSY

As noted above, GSL owns, among other interests, certain lands in fee, upland of the lands in controversy. Under the common law doctrine of reliction and accretion, GSL is the owner down to the water's edge of all the lands in controversy lying below its uplands. Its substantial interest in the controversy is enlarged by its options to obtain interests in reliction lands of similarly-situated upland fee owners. Thus the first requirement for intervention under Rule 24(a) is met.

B. GSL'S INTERVENTION IS NECESSARY TO PREVENT THE IMPAIRMENT OF ITS ABILITY TO PROTECT ITS SUBSTANTIAL INTERESTS

Although GSL may not be bound in the sense of *res judicata* by the result of this suit if it is not allowed to intervene, it nevertheless would find its ability to protect its interests impaired. Even if a decree entered herein purports only to decide the respective rights of the two original parties strictly as between themselves, an adjudication by this Court would be, at the least, highly persuasive authority on any issue of fact or law affecting GSL's rights in the lands in controversy. Thus, as a practical matter, GSL's ability to pursue its rights against the prevailing party in this action would be substantially jeopardized. Accordingly, GSL meets the second criterion set out in Rule 24(a).

C. GSL IS NOT ADEQUATELY REPRESENTED BY ANY OF THE EXISTING PARTIES

The U.S., State and GSL each claim fee ownership of the same portion of the lands in controversy. Since each of the original parties' interests are obviously adverse to those of GSL, neither adequately represents GSL's interests. Accordingly, GSL meets this criterion and all of the criteria set forth in Rule 24(a) and has a right to intervene.[9]

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[9] See *Atlantis Development Corp.* v. *United States*, 379 F.2d 818 (5th Cir. 1967); *International Mortgage & Investment Corp.* v. *Von Glemm*, 301 F.2d 857 (2d Cir. 1962); *Kozak* v. *Wells*, 278 F.2d 104 (8th Cir. 1960).

III. ALTERNATIVELY, GSL SHOULD BE PERMITTED TO INTERVENE.

Rule 24(b) of the Federal Rules of Civil Procedure provides:

> Upon timely application anyone may be permitted to intervene in an action . . . when an applicant's claim or defense and the main action have a question of law or fact in common . . . In exercising its discretion the court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.

GSL's ownership interests in the land in controversy necessarily involve a determination of the same legal and factual issues which have been raised by the U.S. and the State. Therefore, GSL's presence will not unduly delay or prejudice the adjudication of the rights of the original parties. Additionally, GSL's presence will enable this Court to shape its relief so as to do justice to the private claims here involved as well as to render more complete and satisfactory relief to the U.S. and the State. There are thus good reasons why in the exercise of its equitable and discretionary powers this Court should allow GSL to intervene under Rule 24(b).

IV. ALL THE CLAIMS ASSERTED BY GSL ARE WITHIN THIS COURT'S ORIGINAL JURISDICTION

The question has been raised whether intervenors in this action may assert claims against the U.S. since Article III, Section 2, United States Constitution, does not by its terms contemplate a suit between a private party and the U.S. within the original jurisdiction of this Court. While we have found no authority directly comparable to the factual situation in the instant case, we are of the opinion that this Court unquestionably has jurisdiction of the main action by virtue of the character of the original parties.[10] In other cases in which the U.S. was plaintiff and a state defendant in original actions, this Court has allowed private parties to assert defenses similar to the cross claim which GSL proposes to assert against the U.S. in this action.[11] Therefore, we submit that GSL's claims against the U.S. in this action are, for jurisdictional purposes, merely ancillary to the main action. This Court has previously recognized that in original actions it possesses ancillary jurisdiction.[12] Thus, GSL should be allowed to assert its claims against the U.S.

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[10] *United States* v. *Texas*, 143 U.S. 621 (1892).

[11] *United States* v. *Wyoming*, 331 U.S. 440 (1947); *United States* v. *West Virginia*, 295 U.S. 463 (1935).

[12] *Oklahoma* v. *Texas*, 258 U.S. 574 (1922).

CONCLUSION

Notwithstanding and apart from the disposition of any issue respecting GSL's indispensability in this action, GSL clearly satisfies the criteria of Rule 24(a) and 24(b). It is thus respectfully submitted that GSL should be allowed to intervene in this action either as plaintiff pursuant to its original motion, or in the alternative, as defendant, for the reasons set forth in this Supplemental Motion.

GEORGE E. BOSS
Senior & Senior
10 Exchange Place
Salt Lake City, Utah 84111

ROBERT D. LARSEN
Royall, Koegel, Rogers
& Wells
1730 K Street, N.W.
Washington, D.C. 20006

Attorneys for GREAT SALT LAKE MINERALS & CHEMICALS CORPORATION

February 18, 1968.

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ANSWER AND CROSS CLAIM OF DEFENDANT GREAT SALT LAKE MINERALS & CHEMICALS CORPORATION

I

This Defendant, GREAT SALT LAKE MINERALS & CHEMICALS CORPORATION (hereinafter called "GSL"), a Delaware corporation, admits the allegations of Paragraph I of the State of Utah's Complaint (hereinafter called "the Complaint").

II

This Defendant denies the allegations contained in the first sentence of Paragraph II of the Complaint claiming that the State of Utah owns the lands that are the subject

of this action; admits the remaining allegations contained in Paragraph II.

III

This Defendant admits that the Great Salt Lake is navigable; denies the remaining allegations contained in Paragraph III of the Complaint insofar as said allegations may be construed to be allegations of fact.

IV

This defendant is without sufficient information to admit or deny the allegations contained in sentences 1 and 2 of Paragraph IV of the Complaint; admits the allegations contained in sentence 3 of Paragraph IV; has insufficient information to admit or deny the allegations contained in sentences 4 and 5 of Paragraph IV; admits the allegations contained in sentences 6 and 7 of Paragraph IV; has insufficient information to admit or deny the allegations contained in sentences 8 and 9 of Paragraph IV; admits the allegations contained in sentences 10, 11 and 12 of Paragraph IV; admits the allegations in sentence 13 of Paragraph IV that the claim of ownership of the subject lands by the United States is adverse to the claims of ownership of the State of Utah; denies the remaining allegations of sentence 13 of Paragraph IV; admits the allegations of sentence 14 of Paragraph IV so far as it affects lands claimed by GSL; has insufficient information to admit or deny the remaining allegations of sentence 14 of Paragraph IV; alleges that this Defendant is the sole owner of all right, title and interest in and to that portion of the subject lands

lying below the surveyed meander line and contiguous to this Defendant's uplands which are more fully described in this Defendant's Cross Claim, *infra*, p. 14.

V

This Defendant admits the allegations in sentences 1, 2 and 3 of Paragraph V of the Complaint; has insufficient information to admit or deny the allegations in sentence 4 of Paragraph V; admits the allegations of sentences 5, 6, 7 and 8 of Paragraph V; has insufficient information to admit or deny the allegations of all the remaining sentences of Paragraph V.

VI

This Defendant denies each and every allegation of the Complaint not specifically admitted, denied or qualified herein.

WHEREFORE, Defendant GSL prays the Court to quiet its title to its said lands lying below the surveyed meander line of the Great Salt Lake as against the claims of Plaintiff and to grant this Defendant such further relief as the Court deems just and equitable.

CROSS CLAIM

I

GSL is the owner in fee of certain uplands, one described boundary of which is the surveyed meander line of the Great Salt Lake; said uplands are described as follows:

Township 6 North, Range 4 West, S.L.M.
Section 7: W½NE¼, NW¼SE¼, E½NW¼, NE¼SW¼, and Lots 1, 2 and 3

Township 6 North, Range 5 West, S.L.M.
Section 2: Lots 2, 3, 4, 5 and 6 and S½ (20 acres) of Lot 1 and NW¼SW¼ and SW¼NW¼
Section 3: SE¼ and S½NE¼
Section 11: Lot 1

III

Said uplands have at all times been riparian to the Great Salt Lake.

III

Of the subject lands of this controversy, GSL is the owner of that portion which is contiguous to the above described uplands and which lies below the meander line of the Great Salt Lake.

IV

The portion of the subject lands in controversy claimed by GSL belongs to it by virtue of the common law doctrine of reliction and accretion.

V

The United States of America wrongfully and unlawfully asserts title to GSL's lands lying below the surveyed meander line and threatens to dispossess GSL thereof, all to GSL's great continuing and irreparable damage.

VI

Defendant GSL has no adequate remedy at law.

WHEREFORE, Defendant GSL prays the Court to quiet its title to its lands lying below the surveyed meander line of the Great Salt Lake as against the United States and to grant Defendant GSL such other relief as the Court deems just and equitable in the premises.

GEORGE E. BOSS
Senior & Senior
10 Exchange Place
Salt Lake City, Utah 84111

ROBERT D. LARSEN
Royall, Koegel, Rogers
& Wells
1730 K Street, N.W.
Washington, D.C. 20006

Attorneys for GREAT SALT LAKE MINERALS & CHEMICALS CORPORATION

February 18, 1968.

CERTIFICATE OF SERVICE

I, GEORGE E. BOSS, Counsel for Great Salt Lake Minerals & Chemicals Corporation, applicant for Intervention herein, and a member of the Bar of this Court, hereby certify, in accordance with Rule 33 of the Rules of this Court, that five (5) copies of the foregoing Motion, Answer and Cross Claim were served by mail upon the Solicitor General of the United States of America, Department of Justice, Washington, D.C. 20530, Counsel for Defendant United States of America; L. M. McBride and Frank Wollaeger, of McBride, Baker, Wienke & Schlosser, 110 North Wacker Drive, Chicago, Illinois 60606, and Myer Feldman and Martin Jacobs, 1700 Pennsylvania Avenue, N.W., Washington, D.C. 20006, Counsel for Morton International, Inc.; and the Attorney General of the State of Utah, State Capitol Building, Salt Lake City, Utah 84114, Counsel for the State of Utah, this 18th day of February, 1968.

GEORGE E. BOSS

February 18, 1968.